UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHARLES S. BROOKS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner of Social Security,

Defendant.

CASE NO. 3:15-CV-05207-DWC

ORDER ON PLAINTIFF'S COMPLAINT

Plaintiff, Charles S. Brooks, filed this action, pursuant to 42 U.S.C. § 405(g), seeking judicial review of the denial of Plaintiff's applications for Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB"). The parties have consented to proceed before a United States Magistrate Judge. *See* 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13. *See also* Consent to Proceed before a United States Magistrate Judge, Dkt. 6.

After reviewing the record, the Court concludes the Administrative Law Judge ("ALJ") erred in evaluating the opinions of two of Plaintiff's treating therapists. Therefore, this matter must be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

On September 2, 2011, Plaintiff filed applications for DIB and SSI, alleging disability as of January 1, 2010. *See* Dkt. 9, Administrative Record ("AR") 71, 86. The applications were denied upon initial administrative review and on reconsideration. *See* AR 85, 100, 118, 135. A hearing was held before ALJ Jo Hoenninger on July 12, 2013. *See* AR 37-68. In a decision dated July 24, 2013, the ALJ determined Plaintiff to be not disabled. *See* AR 12-27. Plaintiff's request for review of the ALJ's decision was denied by the Appeals Council, making the ALJ's decision the final decision of the Commissioner of Social Security ("Commissioner"). *See* AR 1-7; 20 C.F.R. § 404.981, § 416.1481.

Plaintiff argues the ALJ erred by: (1) improperly evaluating his testimony; (2) improperly evaluating the medical evidence from examining physician Maria Nelson, M.D., examining psychologist Scott Alvord, Psy.D., and unnamed reviewing agency consultants; (3) improperly evaluating lay evidence from Jodi Oliver, ARNP, Jessica Webb, P-ARNP, Nancy Pascua, ARNP, Ryan Lehotay, MA, LMHC, and Misty Holley; (4) failing to find he equaled Listing 12.04B or 12.04C; and (5) improperly assessing his residual functional capacity ("RFC") and basing the step five finding on an incomplete RFC. Dkt. 16, p. 1. Plaintiff also claims new evidence submitted to the Appeals Council supports reversal of the decision. Dkt. 16, p. 2.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). "Substantial evidence" is more than a scintilla, less than a preponderance, and is such "'relevant evidence as a reasonable mind might

accept as adequate to support a conclusion.'" *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (*quoting Davis v. Heckler*, 868 F.2d 323, 325-26 (9th Cir. 1989)).

DISCUSSION

I. Whether the ALJ Properly Evaluated the Lay Opinion Evidence.

A. Standard

Lay testimony regarding a claimant's symptoms "is competent evidence that an ALJ must take into account," unless the ALJ "expressly determines to disregard such testimony and gives reasons germane to each witness for doing so." *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001); *Turner v. Comm'r of Soc. Sec*., 613 F.3d 1217, 1224 (9th Cir. 2010). In rejecting lay testimony, the ALJ need not cite the specific record as long as "arguably germane reasons" for dismissing the testimony are noted, even if the ALJ does "not clearly link his determination to those reasons," and substantial evidence supports the ALJ's decision. *Lewis*, 236 F.3d at 512.

As a threshold matter, Plaintiff argues the opinions of the nurse practitioners and therapists in the records are entitled to more deference than other lay witnesses; thus, the ALJ was required to offer at least specific and legitimate reasons to discount their opinions. Dkt. 16, p. 9. Nurse practitioners and therapists, however, are considered "other sources" under 20 C.F.R. §§ 404.1513(d)(1),(3), rather than "acceptable medical sources." Thus, the ALJ only needed to provide arguably germane reasons to reject their testimony. *Turner*, 613 F.3d at 1224; *Lewis*, 236 F.3d at 511. Nonetheless, "other" medical sources are able to provide evidence about "the severity of [Plaintiff's] impairment(s) and how it affects [Plaintiff's] ability to work."20 C.F.R. § 404.1513(d). *See also Garrison v. Colvin*, 759 F.3d 995, 1023 (9th Cir. 2014). In fact, Social Security Rulings indicate other medical source opinions can outweigh the opinions of acceptable

medical sources in some cases. *See* Social Security Ruling ("SSR") 06-03P, *available at* 2006 WL 2329939.

B. Application of Standard

1. Jessica Webb, P-ARNP

Ms. Webb completed a depressive disorder and anxiety disorder check box questionnaire on August 15, 2012. AR 421-27. She assessed marked restrictions in activities of daily living, and concentration, persistence, or pace, extreme limitations in social functioning, and extreme episodes of deterioration or decompensation. AR 423. Ms. Webb noted she had treated Plaintiff for over six months and his depression and anxiety had not improved despite medication compliance. AR 424. She also stated Plaintiff is "often suicidal and verbal about this." AR 424.

The ALJ gave little weight to her opinions as "they are not accompanied by any narrative explanation or support, and are inconsistent with records that document relatively unremarkable mental status findings and improvement with treatment discussed below." AR 16. Additionally, the ALJ noted Ms. Webb is not a recognized medical source under the social security guidelines. AR 16.

An ALJ may "permissibly reject[ ] ... check-off reports that [do] not contain any explanation of the bases of their conclusions." *Molina v. Astrue*, 674 F.3d 1104, 1111-12 (9th Cir. 2012) (*quoting Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.1996)). However, while Ms. Webb did not provide a supporting explanation *within* her opinion, the record also contains forty-four pages of Ms. Webb's treatment notes. AR 544-588. The ALJ's failure to consider these treatment notes as support for Ms. Webb's opinion was error. *See Garrison*, 759 F.3d at 1013-14 & n.17 (holding the ALJ erred by rejecting a treating nurse practitioner's check-box opinion as unsupported, when the record contained the nurse practitioner's treatment notes, and the treatment notes provided

support for her opinion). Further, the ALJ's other reasons for discounting Ms. Webb's opinion were not germane reasons supported by substantial evidence. Contrary to the ALJ's assertion, Ms. Webb is a "recognized" medical source under Social Security regulations. 20 C.F.R. § 404.1513(d)(1). *See also* SSR 06-03P, *available at* 2006 WL 2329939 ("The term 'medical sources' refers to both 'acceptable medical sources' and other health care providers . . . .") The fact Ms. Webb, a health care provider, is not an "acceptable medical source" does not alter her status as a "medical source", nor does it prevent her from providing evidence on the severity of Plaintiff's impairments or their affect on Plaintiff's ability to work. *See* 20 C.F.R. § 404.1513(d)(1). The ALJ also indicated he was rejecting Ms. Webb's opinion because it was inconsistent with other medical records, which reflect unremarkable mental status examinations and improvements with treatment. *See* AR 16. However, the ALJ does not identify what records are actually inconsistent with Ms. Webb's opinion, other than a general reference to records "as discussed below." AR 16. Further, the ALJ does not explain how Ms. Webb's opinions concerning Plaintiff's social limitations are inconsistent with "relatively unremarkable mental status examinations." AR 16. *See Garrison*, 759 F.3d at 1023 (noting the ALJ "manufactured a conflict" between a nurse practitioner's opinion and other medical records "by identifying two or three reports of improvement in [Plaintiff's] mental health and asserting, without reference to any other treatment records or any other explanation, that [the nurse practitioner's] considered conclusions about [the claimant's] overall prognosis merited little weight.").

As the ALJ failed to provide germane reasons, supported by substantial evidence, for rejecting Ms. Webb's opinion, the ALJ erred. Further, as Ms. Webb opined to more severe limitations than those contained in the ALJ's Step Three assessment and in the ALJ's RFC finding, the Court cannot say the ALJ's rejection of Ms. Webb's opinion was "inconsequential to the

ultimate nondisability determination." *See Molina*, 674 F.3d at 1115-17. Thus, the ALJ's failure to provide germane reasons, supported by substantial evidence, for rejecting Ms. Webb's opinion was harmful error requiring remand.

2. Ryan Lehotay, MA, LMHC

Mr. Lehotay completed a depression and anxiety questionnaire and medical source statement concerning Plaintiff's ability to perform work-related activities. AR 433-37. Mr. Lehotay noted depressive symptoms of anhedonia, appetite and sleep disturbance, guilt and worthlessness, difficulty concentrating and thinking, and suicidal thoughts. AR 433. He also reported Plaintiff showed mania, hyperactivity pressured speech, flight of ideas, and inflated self-esteem. AR 433. Mr. Lehotay said Plaintiff suffered from panic attacks, irrational fear, and generalized anxiety symptoms. AR 434. He rated moderate impairment in Plaintiff's ability to understand, remember, and carry out short, simple instructions, and make judgments on simple work related decisions. AR 436. Plaintiff had marked limitations in his ability to understand, remember, and carry out detailed instructions, interact appropriately with the public, supervisors, and co-workers, and respond appropriately to pressures and changes in a usual work setting. AR 436-37. Mr. Lehotay stated that observations made during sessions and interactions with clinical staff indicate emotional lability and unstable affect, irritability, and significant impairment in remembering and carrying out instructions. AR 437. He also opined Plaintiff would have periods of decompensation. AR 437.

The ALJ rejected this opinion for reasons similar to, though distinct from, those discussed above. The ALJ rejected Mr. Lehotay's opinion because "he failed to provide any explanation or justification for the limitations, which are not consistent with the longitudinal record [AR 433-35]. Moreover, [Mr. Lehotay is not a] recognized medical source[] under social security guidelines." AR 16. Later in the written decision, the ALJ also concludes Mr. Lehotay's "records indicate that

he assessed improvement in the claimant's condition, and fail to document any significant mental status findings or observations that would support the extent of the limitations assessed. In addition, the claimant's activities support greater functioning." AR 23.

As with Ms. Webb, Mr. Lehotay's status as an "other" medical source is not, by itself, a germane reason to discount his opinion. 20 C.F.R. § 404.1513(d)(1). Also, as with Ms. Webb, Mr. Lehotay's twenty-three pages of treatment notes provide support for his opined limitations. AR 470-493. *See Garrison*, 759 F.3d at 1013-14 & n.17. As for the additional reasons the ALJ cites to discount Mr. Lehotay's opinion, they are not supported by substantial evidence. For example, contrary to the ALJ's analysis of Mr. Lehotay's records, Mr. Lehotay documented longitudinal *regression* in Plaintiff's condition, punctuated by sporadic, yet temporary, improvements. AR 470-493. Finally, the ALJ failed to identify which of Plaintiff's activities of daily living actually conflict with Mr. Lehotay's opinion, and otherwise failed to explain how any of Plaintiff's activities support greater functioning than Mr. Lehotay indicated. *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) . AR 436-37, 470-86. As with Ms. Webb, the ALJ's failure to provide germane reasons, supported by substantial evidence, for rejecting Mr. Lehotay's opinion was harmful error.

II. Whether the ALJ Provided Specific, Clear and Convincing Reasons, Supported by Substantial Evidence, for Finding Plaintiff Not Fully Credible.

A. Standard

If an ALJ finds a claimant has a medically determinable impairment which reasonably could be expected to cause the claimant's symptoms, and there is no evidence of malingering, the ALJ may reject the claimant's testimony only "by offering specific, clear and convincing reasons." *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (*citing Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.1993)). *See also Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). However, sole

responsibility for resolving conflicting testimony and questions of credibility lies with the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999) (*citing Waters v. Gardner*, 452 F.2d 855, 858 n.7 (9th Cir. 1971); *Calhoun v. Bailar*, 626 F.2d 145, 150 (9th Cir. 1980)). Where more than one rational interpretation concerning a plaintiff's credibility can be drawn from substantial evidence in the record, a district court may not second-guess the ALJ's credibility determinations. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). *See also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) ("Where the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."). In addition, the Court may not reverse a credibility determination where that determination is based on contradictory or ambiguous evidence. *See Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). That some of the reasons for discrediting a claimant's testimony should properly be discounted does not render the ALJ's determination invalid, as long as that determination is supported by substantial evidence. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

B. Application of Standard

Plaintiff testified that he experiences extreme anxiety. AR 49. He does not want to leave his house or be seen by anybody. AR 55. He has difficulty with memory, concentration, and poor judgment. AR 56-57. He estimated he can sit or stand for no more than 30 minutes. AR 57. He experiences pain in his right wrist, elbow, and shoulder so severe, if he used a screw driver for a short period of time his "wrist would be shot to the point where [he] can't open a water bottle for a few days." AR 57. If he writes more than a paragraph his fingers go numb and his wrist hurts. AR 58. Also, he has right shoulder pain often requiring him to rest his right arm in crook of other arm. AR 57-58.

Plaintiff argues the ALJ failed to offer clear and convincing reasons, supported by substantial evidence, for discounting his testimony. But, the ALJ cited Plaintiff's conservative treatment history for his neck, shoulder and hand impairments, as well as inconsistencies between Plaintiff's testimony and the medical records. AR 18 326-28, 364-71, 399-400. The ALJ also noted Plaintiff's ongoing work activity and work attempts, as well as medical records indicating Plaintiff's medication regimen for his mental health impairments would not impact his ability to work as a truck driver, were inconsistent with Plaintiff's alleged inability to work. AR 21, 113, 227-28, 333, 365, 375-76. These were clear and convincing reasons, supported by substantial evidence, for discounting Plaintiff's testimony. *See Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (*citing Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)); *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007); *Molina v. Astrue*, 674 F.3d at 1113; *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 1995).

However, an evaluation of a claimant's credibility relies, in part, on an accurate assessment of the medical evidence. *See* 20 C.F.R. §§ 404.1529(c), 416.929(c). As discussed in Section I, above, the ALJ erred in evaluating the opinion evidence from Plaintiff's treating therapists, requiring remand. As this case must be remanded for further proceedings in any event, the ALJ should also reevaluate Plaintiff's credibility anew on remand.

III. Whether the ALJ erred in concluding Plaintiff did not meet a Listing.

Plaintiff asserts the ALJ erred in finding he did not meet or equal Listings 12.04B or 12.04C. Dkt. 16, p. 1. At Step Three of the disability analysis, the ALJ must determine whether any of the claimant's impairments meet or medically equal an impairment listed under 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. § 416.920(4)(iii). "If a claimant has an impairment or combination of impairments that meets or equals a condition outlined in the 'Listing of

Impairments,' then the claimant is presumed disabled at step three." *Lewis*, 236 F.3d at 512. The claimant bears the burden of proving that his impairment meets a Listing. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

Listing 12.04 requires a finding that the claimant either satisfies: (1) the "paragraph B criteria" for mental impairments of two marked limitations in activities of daily living, social functioning, or concentration, persistence and pace, or one marked limitation and repeated episodes of decompensation, or; (2) the "paragraph C" requirement of repeated episodes of decompensation of extended duration, a residual disease process that has resulted in such marginal adjustment such that minimal increase in mental demands or changes is the environment would cause decompensation, or an inability to function outside of home or highly supportive living environment. *See* 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.04C. *See* 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.04B.

The ALJ found Plaintiff mildly impaired in his activities of daily living, and moderately impaired in social functioning, concentration, persistence, or pace. AR 15-16. As a result, the ALJ concluded plaintiff did not meet the requirements of paragraph B. AR 16. Additionally, the ALJ determined Plaintiff did not present evidence of decompensation necessary to satisfy paragraph C. However, these findings are inconsistent with the conclusions of Ms. Webb and Mr. Lehotay, who opined to marked and extreme limitations in all of the paragraph B criteria. As the ALJ failed to offer germane reasons for discounting Ms. Webb and Mr. Lehotay's opinions, the ALJ's findings at Step Three of the sequential evaluation are not supported by substantial evidence. *See, e.g.*, *Buchholz v. Barnhart*, 56 Fed.Appx. 773, 775 (9th Cir. 2003). Thus, on remand, the ALJ will be required to reevaluate the medical evidence and determine whether Plaintiff meets or exceeds the criteria for Listings 12.04B or 12.04C. *See id.*

IV. Other Assignments of Error.

In addition to the foregoing, Plaintiff contends the ALJ erred by failing to properly assess Plaintiff's RFC, and by failing to properly evaluate Plaintiff's ability to perform other jobs existing in substantial numbers in the national economy at Step Five of the sequential evaluation process.

As discussed above, the ALJ erred by failing to properly evaluate the opinions of Ms. Webb and Mr. Lehotay. An ALJ's failure to properly evaluate all of the medical opinion evidence may result in a flawed RFC finding. *See* SSR 96-8-p, 1996 WL 374184 at *2. Thus, the ALJ will necessarily have to re-evaluate Plaintiff's RFC on remand, and proceed on to Steps Four and Five, as appropriate.

V. Whether the New Evidence Submitted to the Appeals Council Supports Reversal of the ALJ's Decision

Plaintiff argues the Court should review additional psychological evidence submitted to the Appeals Council. Dkt. 16, p. 25. The additional evidence consisted of a psychological evaluation performed by David Morgan, Ph.D., on October 30, 2013. Dkt. 16, Exh.1. The Appeals Council reviewed the new submission, but elected not to consider the evidence or include it in the Administrative Record:

> We also looked at a psychological/psychiatric evaluation dated October 30, 2013, completed by David T. Morgan, PhD. The Administrative Law Judge decided your case through July 24, 2013. This new information is about a later time. Therefore it does not affect the decision about whether you were disabled beginning on or before July 24, 2013.

AR 2. Plaintiff contends the Appeals Council's failure to include this information in the Administrative Record violated the Social Security Act, Social Security Regulations, precedent from *Brewes v. Comm'r of SSA*, 682 F.3d 1157 (9th Cir. 2012) and *Taylor v. Comm'r of Soc. Sec. Admin.*, 659 F.3d 1228, 1231 (9th Cir. 2011), and procedures in HALLEX I-4-1-54. Plaintiff requests the Court determine the evidence relates back to the relevant time period and was

erroneously excluded by the Appeals Council. Plaintiff also contends the additional evidence shows the ALJ decision was not based on substantial evidence and reversal is required. Dkt. 16, p. 25-27.

Sentence Six of 42 U.S.C. § 405(g) authorizes a reviewing court to remand a case to the Commissioner "upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." 42 U.S.C. § 405(g); *See Melkonyan v. Sullivan*, 111 S.Ct. 2157, 2164, 501 U.S. 89 (1991).[1] In light of the fact the case is being remanded on other grounds, the Court need not decide whether Sentence Six applies, nor whether Plaintiff has demonstrated the necessary requirements for a remand under Sentence Six. However, the Court has reviewed Dr. Morgan's report, and has concluded it constitutes new and material evidence which relates to the period at issue. *See* 20 C.F.R. §§ 404.970(b), 416.1470(b). *See also Taylor*, 659 F.3d at 1233. Therefore, on remand, the Commissioner is directed to reevaluate Dr. Morgan's report.

VI. Whether the Case Should be Remanded for an Award of Benefits or Further Proceedings.

Plaintiff conclusorily argues the case should be reversed and remanded for the award of benefits, rather than for further proceedings.

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[1] Neither party raised the Sentence Six issue. After determining the case potentially presented a Sentence Six issue, the undersigned ordered supplemental briefing on the following two questions:

- Whether Sentence Six of 42 U.S.C. § 405(g) applies to the evidence (Dr. Morgan's opinion) submitted to the Appeals Council, but not included in the administrative record; and
- If so, whether Dr. Morgan's opinion is new evidence which is material, and whether good cause exists for failing to incorporate the opinion into the record during a prior proceeding.

Dkt. 24.

Generally, when the Social Security Administration does not determine a claimant's application properly, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). However, the Ninth Circuit has established a "test for determining when [improperly rejected] evidence should be credited and an immediate award of benefits directed." *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (*quoting Smolen*, 80 F.3d at 1292. This test, often referred to as the "credit-as-true" rule, allows a court to direct an immediate award of benefits when:

> (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence, (2) there are no outstanding issues that must be resolved before a determination of disability can be made, and (3) it is clear from the record that the ALJ would be required to find the claimant disabled were such evidence credited.

Harman, 211 F.3d at 1178 (*quoting Smolen*, 80 F.3d at 1292). *See also Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1100 (9th Cir. 2014), *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396 (9th Cir. 1988). Further, even if the ALJ has made the three errors under *Harman* and *Smolen*, such errors are relevant only to the extent they impact the underlying question of Plaintiff's disability. *Strauss v. Commissioner of the Social Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011). "A claimant is not entitled to benefits under the statute unless the claimant is, in fact, disabled, no matter how egregious the ALJ's errors may be." *Id.* (citing *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 357 (7th Cir. 2005)). Therefore, even if the credit-as-true conditions are satisfied, a court should nonetheless remand the case if "an evaluation of the record as a whole creates serious doubt that a claimant is, in fact, disabled." *Garrison*, 759 F.3d at 1021 (*citing Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2004)).

Here, outstanding issues must be resolved. The record contains conflicting evidence concerning the degree and significance of Plaintiff's physical and mental impairments, as well as

outstanding questions concerning Plaintiff's credibility. Further, the limitations opined to by Ms. Webb and Mr. Lehotay conflict with the more restrictive opinions rendered by several state agency medical consultants. *See* AR 21, 71-100, 103-136, 393-94, 397-401, 483, 545. *See* Section I, *supra*. Thus, there is insufficient evidence in the record to establish Plaintiff could be found disabled as a matter of law. *See Harman*, 211 F.3d at 1180. *See also Treichler*, 775 F.3d at 1105-06. Therefore, the case should be remanded for additional proceedings.

CONCLUSION

Based on the foregoing reasons, the Court hereby finds the ALJ erred by failing to properly evaluate the other medical source opinions of Ms. Webb and Mr. Lehotay. Therefore, the Court orders this matter be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g). On remand, the ALJ should reevaluate all of the medical opinion evidence and other medical source evidence, reevaluate Plaintiff's credibility, consider whether Plaintiff meets or exceeds the criteria of a Listing at Step Three of the sequential evaluation, and proceed on to Step Four and/or Step Five of the sequential evaluation as appropriate. In addition, the Commissioner should reevaluate the newly-obtained opinion from David Morgan, Ph.D. (Dkt. 16, Exh. 1) to determine whether it should be considered by the ALJ on remand, The ALJ should also develop the record as needed. Judgment should be for Plaintiff and the case should be closed.

Dated this 31st day of March, 2016.

David W. Christel
United States Magistrate Judge